

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

IN RE: §
PERSEVERANCE GROUP, LLC, §
§
§
Debtor. §
Case No. 21-30584-HCM-11

**FIRST AND FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT
OF EXPENSES OF BRAD W. ODELL AS SUBCHAPTER V TRUSTEE**

**THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO YOUR
INTERESTS.**

IF NO TIMELY RESPONSE IS FILED WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE, THE RELIEF REQUESTED HEREIN MAY BE GRANTED WITHOUT A HEARING BEING HELD.

A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.

TO THE HONORABLE H. CHRISTOPHER MOTT, U.S. BANKRUPTCY JUDGE:

NOW COMES, Brad W. Odell, the Subchapter V Trustee ("Trustee") in the above captioned bankruptcy case (the "Case") and files this First and Final Application for Compensation and Reimbursement of Expenses of Brad W. Odell as Subchapter V Trustee (the "Application"), pursuant to section 326 and 330 of title 11 of the United States Code (as amended, the "Bankruptcy Code"), Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 2014 of the Local Rules of the United States Bankruptcy Court for the Western District of Texas (the "Bankruptcy Local Rules"), seeking allowance on a final basis of all the fees and expenses incurred by applicant from August 4, 2021 through January 14, 2022 (the "Compensation Period"), in the amount of total amount of \$4,400.07 (\$4,349.50 for fees and \$50.57 for expenses).

A. Background and Jurisdiction

1. Perseverance Group, LLC (the “Debtor”) filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code on August 4, 2021, in the United States Bankruptcy Court for the Western District of Texas, El Paso Division. The Debtor elected to proceed under Subchapter V of Chapter 11 of the Bankruptcy Code.

2. On August 4, 2021, Brad W. Odell was appointed as Subchapter V Trustee in this bankruptcy cases [Docket #2].

3. On January 10, 2022, the Court entered its Order Dismissing Chapter 11 Case [Docket # 98].

4. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue for this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought by this Application are sections 105, 326, and 330(a) of the Bankruptcy Code.

B. Employment and Prior Compensation

5. The Trustee has not previously filed an application for compensation as Subchapter V Trustee in this Case.

6. The Trustee has not entered into any agreement, express or implied, with any other party for the purpose of fixing or sharing fees or other compensation to be paid for professional services rendered in this Case.

7. No promises have been received by the Trustee as to compensation in connection with this Case other than in accordance with the provisions of the Bankruptcy Code.

8. The Trustee has not received a pre-petition or post-petition deposit or retainer.

C. Compensation Requested

9. By this Application, the Trustee is seeking allowance of compensation for professional services rendered as Subchapter V Trustee.

10. The Trustee seeks approval on a final basis of the total fees of \$4,349.50 for services rendered as Subchapter V Trustee during the Compensation Period and \$50.57 for reimbursement of actual and necessary expenses incurred in connection with the rendition of such services, for a total award of \$4,400.07.

11. The Trustee's charges for professional services rendered in this case were billed in accordance with the Notice of Appointment of Subchapter V Trustee. The rates for Brad W. Odell, Subchapter V Trustee, are \$290.00 per hour.

12. The Trustee submits that this Application complies with Sections 330 of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and the United States Trustee Guidelines.

13. The fees sought by the Application reflect an aggregate of 15.30 hours of time spent in performing services during the Compensation Period.

D. Time Records

14. In support of the Application, attached hereto as Exhibit "A" is the Fee Application Summary, which sets forth a detailed description of services performed by the Trustee.

15. The services performed by the Trustee are detailed in the Trustee's detailed time records during the Compensation Period attached as Exhibit "B."

16. The Trustee submits that the foregoing services were necessary to fulfill his duties as Subchapter V Trustee, were necessary and beneficial to the bankruptcy estates at the time these

services were rendered, were performed without unnecessary duplication of effort or expense. The Trustee's request for compensation for the foregoing services is reflective of a reasonable amount of time expended in performing such services commensurate with the complexity, importance and nature of the problems, issues and tasks involved.

E. Standards for the Award of Compensation

17. With respect to the amount of compensation, section 330(a)(1) of the Bankruptcy Code provides, in pertinent part, that the Court may award to a trustee: "reasonable compensation for actual, necessary services rendered." 11 U.S.C. § 330(a)(1)(A).

18. In turn, Bankruptcy Code section 330(a)(3) provides that in determining the amount of reasonable compensation to be awarded, a Court shall consider the nature, the extent, and the value of the services rendered by the trustee, while taking into account all relevant factors, including the following:

- The time spent on such services;
- The rates charged for such services;
- Whether the services were necessary to the administration of, or beneficial at the time which the service was rendered toward the completion of, the chapter 11 case.
- Whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issues or task addressed;
- Whether the trustee has demonstrated skill and experience in consulting within the bankruptcy field; and
- Whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than chapter 11 cases.

11 U.S.C. § 330(a)(3). *See also In re Busy Beaver Bldg. Ctrs., Inc.*, 19 F.3d 833, 850 (3d Cir. 1994) (noting Bankruptcy Code's policy of providing adequate compensation and stating that

“Congress rather clearly intended to provide sufficient economic incentive to lure competent bankruptcy specialists to practice in the bankruptcy courts”) (citation and internal quotation marks omitted).

19. In interpreting these authorities to determine an award of compensation, most courts have adopted the standards enumerated in *Am. Benefit Life Ins. Co. v. Baddock (In re First Colonial Corp. of Am.)*, 544 F.2d 1291, 1298-99 (5th Cir. 1977), cert. denied, 431 U.S. 904. The Trustee respectfully submits that, as demonstrated below, the application of these factors to the services performed by the Trustee as the duly appointed Subchapter V Trustee should result in this Court’s allowance of the full compensation sought.

F. Application of the First Colonial Factors

20. The Time and Labor Required. The professional services rendered by the Trustee have required substantial time and effort.

21. The Novelty and Difficulty of Questions. Novel and complex issues have arisen in the course of this case.

22. The Skill Requisite to Perform the Firm’s Services Properly. The Trustee believes that his expertise in the areas of bankruptcy, real estate and commercial law, combined with his approach to the resolution of issues contributed to the protection of the bankruptcy estate’s interests.

23. The Preclusion of Other Employment by Applicant Due to Acceptance of the Cases. To a certain extent, the Trustee appointment precluded other new clients.

24. The Customary Fee. The compensation sought herein is based upon the Trustee’s approved hourly billing rate for services of this kind. The Trustee respectfully submits that the compensation sought herein is not unusual given the magnitude and complexity of this Case and

the time dedicated to serving as the Subchapter V trustee. Such compensation is commensurate with fees charged by other firms of comparable experience.

25. Whether the Fee is Fixed or Contingent. The Trustee charges customary hourly rates for his services based on experience and the fee is not outcome-dependent. Pursuant to Sections 330 and 331 of the Bankruptcy Code, all fees sought by professionals retained under Section 327 or 1103 of the Bankruptcy Code are contingent pending final approval by the Court and are subject to adjustment by the Court depending upon the services rendered and the results obtained.

26. Time Limitation Imposed by Client or Other Circumstances. Occasionally in this case, the Trustee has had to perform its services under significant time constraints.

27. The Amount Involved and Results Obtained. The Trustee worked with counsel for the Debtor, other creditors, and parties-in-interest to work towards the confirmation of a consensual plan; however, the Debtor's case was dismissed after Debtor's counsel withdrew and the Debtor failed to acquire new counsel.

28. The Experience, Reputation and Ability of the Trustee. The Trustee's experience enables him to perform the services described herein competently and expeditiously. The Trustee is experienced and regarded as qualified in the business bankruptcy reorganization field.

29. The "Undesirability" of the Case. This Case was not undesirable, but as already indicated, has required a significant commitment of time from the Trustee.

30. Nature and Length of Professional Relationship. Brad W. Odell was appointed as Subchapter V Trustee on August 4, 2021.

31. Actual and Necessary Expenses. The Trustee has incurred minimal actual and necessary expenses during the course of the Compensation Period.

32. The Trustee spent one and a half hours in preparing this Application and incurred \$46.08 in expenses in serving the Application. The Trustee might incur additional fees and expenses if attendance at any hearings thereon is required. The Trustee requests that these fees be paid by the Bankruptcy Estate as an administrative expense and in accordance with the Bankruptcy Code.

WHEREFORE, Brad W. Odell, as Subchapter V Trustee, respectfully requests that the Court enter an order: (a) approving this Application on a “final” basis; (b) allowing Brad W. Odell, as Subchapter V Trustee, a total sum of \$4,400.07 consisting of \$4,349.50 in fees earned and \$50.57 in expenses incurred during the Compensation Period; (c) ordering the Debtor to pay to the Trustee the \$4,400.07 in allowed fees and expenses; and (d) allowing such other and further relief to which he is justly entitled.

Dated: January 14, 2022

Respectfully Submitted,

By: /s/ Brad W. Odell
Brad W. Odell, SBN: 24065839

MULLIN HOARD & BROWN, LLP
Brad W. Odell, SBN: 24065839
P. O. Box 2585
Lubbock, Texas 79408-2585
Tel: (806) 765-7491
Fax: (806) 765-0553
Email: bodell@mhba.com
Subchapter V Trustee

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of January, 2022, a true and correct copy of the foregoing document was filed with the Court and served by first class mail, postage prepaid and properly addressed to all parties listed on the attached Mailing Matrix and/or electronically upon those parties registered to receive electronic notice via the Court's CM/ECF system.

By: /s/ Brad W. Odell
Brad W. Odell

Label Matrix for local noticing

0542-3

Case 21-30584-hcm

Western District of Texas

El Paso

Fri Jan 14 13:58:43 CST 2022

U.S. BANKRUPTCY COURT

511 E. San Antonio Ave., Rm. 444
EL PASO, TX 79901-2417Perseverance Group, LLC
118
211 E. 7th Street, Suite 620
Austin, TX 78701-3218

BBMC Properties, LLC
c/o Uprising Investments, LLC
4150 Rio Bravo, Suite 245
El Paso, Texas 79902-1077Borderland Investments, LLC
700 Montana Avenue
El Paso, TX 79902-5306City of El Paso
c/o Don Stecker
112 E. Pecan St. Suite 2200
San Antonio, TX 78205-1588Crusades Realty Investments, LLC
c/o Kemp Smith LLP
Attn: James W. Brewer
221 N. Kansas, Ste. 1700
El Paso, TX 79901-1401Dona Ana County Treasurer
845 N. Motel Blvd.
Las Cruces, NM 88007-8100EP Smart Money LLC
c/o Mills Escrow
906 N. Mesa Street, Ste. 101
El Paso, TX 79902-4080EP Smart Money, LLC
Robert R. Feuille
Scott Hulse, PC
201 E. Main, Suite 1100
El Paso, TX 79901-1325Entrust Capital Funding
c/o Cassandra Chairez
2077 N. Zaragoza, B203
El Paso, TX 79938-7900MLR Grantor Trust
Robert Malooly, Trustee
920 N. Stanton Street
El Paso, TX 79902-4107Mark Salloum
Salloum Law Firm, PC
661 S Mesa Hills Dr., #100
El Paso, TX 79912-5550Mayan Family Limited Partnership and My Vent
c/o Uprising Investments, LLC
4150 Rio Bravo, Suite 245
El Paso, Texas 79902-1077Michael Zimprich
7001 Westwind Drive
El Paso, TX 79912-1778Perseverance Group, LLC
P.O. Box 1734
Las Cruces, NM 88004-1734Robert T. Pearson
214 W Franklin Ave.
El Paso, TX 79901-1120Select Portfolio Servicing, Inc.
c/o McCarthy Holthus, LLP
1255 West 15th Street, Suite 1060
Plano, TX 75075-4220United States Trustee - EP12
U.S. Trustee's Office
615 E. Houston, Suite 533
P.O. Box 1539
San Antonio, TX 78295-1539Brad W. Odell
Mullin Hoard & Brown, LLP
1500 Broadway, Suite 700
Lubbock, TX 79401-3169End of Label Matrix
Mailable recipients 20
Bypassed recipients 0
Total 20

EXHIBIT "A"
IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

IN RE: §
PERSEVERANCE GROUP, LLC, § Case No. 21-30584-HCM-11
Debtor. §

FEE APPLICATION SUMMARY

- I. CLIENT: Bankruptcy Estate of PERSEVERANCE GROUP, LLC
- II. REQUESTING APPLICANT/FIRM: Brad W. Odell, Subchapter V Trustee
- III. TOTAL AMOUNT OF FEES REQUESTED:
 - a. Fees: \$4,349.50
 - b. Expenses: \$50.57
 - c. Retainer: None
 - d. Time Period Covered: August 4, 2021 through January 14, 2022
- IV. BREAKOUT OF CURRENT APPLICATION

Attorney/Paralegal	Hours Spent	Hourly Rate	Total
Brad W. Odell	13.10	\$290.00	\$ 4,234.00
Mitzi Emert	0.70	\$165.00	\$ 115.50
TOTAL:	11.80		\$ 4,349.50

MINIMUM FEE INCREMENTS: The Trustee bills time in tenth of hours.

EXPENSES: The Trustee is requesting \$50.57 in expenses. The Trustee charges \$.20 per page for photocopying; and all other expenses are based on actual charges (no premium) for expenses incurred, including long distance telephone calls, postage, reimbursement of travel expenses and charges for services by third parties. Below is a summary of the expenses charged:

Postage	\$ 14.61
Copy Charges	\$ 33.80
PACER	\$ 0.00
Long Distance Calls	\$ 2.16
TOTAL:	\$ 50.57

AMOUNT ALLOCATED FOR PREPARATION OF THIS FEE APPLICATION: The Trustee has billed one and a half hours for the preparation of this fee application as of the time of filing. Additional expenses incurred for the serving of this fee application and any preparation and attendance at a hearing on this fee application will be included in invoices at a later time.

V. PRIOR APPLICATIONS: None.

VI. OTHER CO-EQUAL OR ADMINISTRATIVE CLAIMANTS IN THIS CASE:

- a. Counsel for the Debtor.

It is believed that allowance of the Trustee's Fee Application will not result in the Debtor's estate not being able to pay all co-equal administrative claims in this case.

VII. RESULTS OBTAINED:

1. **Case Administration:** This included but is not limited to administrative work associated with being appointed Trustee; review of filings of the Debtor including, pleadings, schedules, statement of financial affairs, orders, and disclosures; preparation for and attendance at Initial Debtor Interview, hearings, and creditors' meetings; preparation of responses filed by Trustee; and preparation of fee application.

(BWO: 5.50 hours @ \$290.00/hour = TOTAL: \$1,595.00; ME: 0.70 hours @ \$165.00/hour = TOTAL \$115.50)

2. **Work related to Creditors' Claims:** This included but is not limited to work associated with reviewing claims of creditors and discussions with creditors and debtor regarding case.

(BWO: 1.40 hours @ \$290.00/hour = TOTAL: \$406.00)

3. **Work Related to Chapter 11 Plan:** This included but is not limited to work associated with review and analyzing status report; drafting report in lieu of attendance at Status Conference; analyzing and commenting on Plan of Reorganization; drafting limited objection to confirmation; and attendance at hearing on continuance of confirmation hearing.

(BWO: 7.70 hours @ \$290.00/hour = TOTAL: \$2,233.00)



P. O. BOX 31656
AMARILLO, TX 79120-1656
 806-372-5050
TAX ID #75-2319090

*****INVOICE*****

Brad W. Odell, Subchapter V Trustee
 1500 Broadway, Suite 700
 Lubbock, TX 79401

Page: 1
 Invoice Date: September 9, 2021
 Account No.: 18167.27
 Invoice No.: 1

Perseverance Group LLC

FEES

		HOURS
08/11/2021	BO Communications with counsel regarding schedules and IDI.	0.40
08/19/2021	BO Prepared for and attended IDI.	0.50
	FOR CURRENT SERVICES RENDERED	<u>0.90</u>
		261.00

RECAPITULATION

<u>TIMEKEEPER</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
Brad Odell	0.90	\$290.00	\$261.00

TOTAL CURRENT WORK	261.00
BALANCE DUE UPON RECEIPT	<u>\$261.00</u>

INVOICE DUE UPON RECEIPT
PLEASE INDICATE ACCOUNT NUMBER ON REMITTANCE
PAYMENTS RECEIVED AFTER DATE OF THIS STATEMENT ARE NOT REFLECTED ON THIS INVOICE



P. O. BOX 31656
AMARILLO, TX 79120-1656
 806-372-5050
TAX ID #75-2319090

*****INVOICE*****

Brad W. Odell, Subchapter V Trustee
 1500 Broadway, Suite 700
 Lubbock, TX 79401

Page:	1
Invoice Date:	October 7, 2021
Account No.:	18167.27
Invoice No.:	2

Perseverance Group LLC

FEES

		HOURS
09/10/2021	BO Prepared for and attended creditors' meeting.	0.90
09/22/2021	BO Drafted Trustee's report in lieu of attendance at status conference.	0.50
	FOR CURRENT SERVICES RENDERED	1.40
		406.00

RECAPITULATION

<u>TIMEKEEPER</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
Brad Odell	1.40	\$290.00	\$406.00

TOTAL CURRENT WORK	406.00
PREVIOUS BALANCE	\$261.00
BALANCE DUE UPON RECEIPT	<u>\$667.00</u>

INVOICE DUE UPON RECEIPT

PLEASE INDICATE ACCOUNT NUMBER ON REMITTANCE

PAYMENTS RECEIVED AFTER DATE OF THIS STATEMENT ARE NOT REFLECTED ON THIS INVOICE



P. O. BOX 31656
AMARILLO, TX 79120-1656
 806-372-5050
TAX ID #75-2319090

*****INVOICE*****

Brad W. Odell, Subchapter V Trustee
 1500 Broadway, Suite 700
 Lubbock, TX 79401

Page: 1
 Invoice Date: November 10, 2021
 Account No.: 18167.27
 Invoice No.: 3

Perseverance Group LLC

FEES

		HOURS
10/28/2021		
BO	Analyzed motions for relief from stay.	1.40
	FOR CURRENT SERVICES RENDERED	<u>1.40</u>
		406.00

RECAPITULATION

<u>TIMEKEEPER</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
Brad Odell	1.40	\$290.00	\$406.00

TOTAL CURRENT WORK	406.00
--------------------	--------

PREVIOUS BALANCE	\$667.00
------------------	----------

BALANCE DUE UPON RECEIPT	<u>\$1,073.00</u>
--------------------------	-------------------

INVOICE DUE UPON RECEIPT

PLEASE INDICATE ACCOUNT NUMBER ON REMITTANCE

PAYMENTS RECEIVED AFTER DATE OF THIS STATEMENT ARE NOT REFLECTED ON THIS INVOICE



P. O. BOX 31656
AMARILLO, TX 79120-1656
806-372-5050
TAX ID #75-2319090

*****INVOICE*****

Brad W. Odell, Subchapter V Trustee
1500 Broadway, Suite 700
Lubbock, TX 79401

Page: 1
Invoice Date: December 7, 2021
Account No.: 18167.27
Invoice No.: 4

Perseverance Group LLC

FEES

		HOURS	
11/01/2021	BO	Analyzed draft plan sent by M. Nevarez; communications with M. Nevarez regarding same.	1.20
11/02/2021	BO	Call with M. Nevarez regarding plan.	0.50
11/05/2021	BO	Analyzed motion to employ realtor; sent comments to M. Nevarez regarding motion and orders.	1.20
11/09/2021	BO	Attendance at hearing on application to employ realtor and motion for relief from stay.	1.00
11/10/2021	BO	Analyzed plan of reorganization; provided comments to M. Nevarez regarding same.	2.80
		FOR CURRENT SERVICES RENDERED	<u>6.70</u>
			<u>1,943.00</u>

RECAPITULATION

<u>TIMEKEEPER</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
Brad Odell	6.70	\$290.00	\$1,943.00

EXPENSES

11/02/2021	Long distance telephone call, from ext 101, 1(915)225-2255	2.16
	TOTAL EXPENSES	<u>2.16</u>
	TOTAL CURRENT WORK	1,945.16

INVOICE DUE UPON RECEIPT

PLEASE INDICATE ACCOUNT NUMBER ON REMITTANCE

PAYMENTS RECEIVED AFTER DATE OF THIS STATEMENT ARE NOT REFLECTED ON THIS INVOICE

Brad W. Odell, Subchapter V Tru

Perseverance Group LLC

Page: 2
Invoice Date: December 7, 2021
Account No.: 18167.27
Invoice No.: 4

PREVIOUS BALANCE \$1,073.00

BALANCE DUE UPON RECEIPT \$3,018.16



P. O. BOX 31656
 AMARILLO, TX 79120-1656
 806-372-5050
TAX ID #75-2319090

*****INVOICE*****

Brad W. Odell, Subchapter V Trustee
 1500 Broadway, Suite 700
 Lubbock, TX 79401

Page:	1
Invoice Date:	January 11, 2022
Account No.:	18167.27
Invoice No.:	6

Perseverance Group LLC

FEES

		HOURS
12/02/2021		
BO	Communications with counsel for Debtor regarding amended plan; drafted limited objection to confirmation; attention to objection to confirmation.	1.40
ME	Finalize and file Limited Obj. to Confirmation of Plan.	0.20
12/03/2021		
BO	Attention to service of objection regarding confirmation; reviewed fee application; correspondence with M. Nevarez regarding confirmation hearing.	0.90
ME	Receipt of call from Clerk regarding filing; Draft Amended Certificate of Service on Objection to Confirmation; File same.	0.50
12/16/2021		
BO	Attended hearing on motion to withdraw as Debtor's counsel, motion to continue confirmation hearing, and confirmation.	0.40
	FOR CURRENT SERVICES RENDERED	3.40
		898.50

RECAPITULATION

<u>TIMEKEEPER</u>	<u>HOURS</u>	<u>HOURLY RATE</u>	<u>TOTAL</u>
Brad Odell	2.70	\$290.00	\$783.00
Mitzi Emert	0.70	165.00	115.50

EXPENSES

12/03/2021	Postage	0.53
12/08/2021	Photocopying, 9, 9 pp @ \$0.20 each	1.80
	TOTAL EXPENSES	2.33

INVOICE DUE UPON RECEIPT

PLEASE INDICATE ACCOUNT NUMBER ON REMITTANCE

PAYMENTS RECEIVED AFTER DATE OF THIS STATEMENT ARE NOT REFLECTED ON THIS INVOICE

Brad W. Odell, Subchapter V Tru

Perseverance Group LLC

Page: 2
Invoice Date: January 11, 2022
Account No.: 18167.27
Invoice No.: 6

TOTAL CURRENT WORK	900.83
PREVIOUS BALANCE	\$3,018.16
BALANCE DUE UPON RECEIPT	<u>\$3,918.99</u>